IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

VINCENT KHOURY TYLOR and VINCENT SCOTT TYLOR, Plaintiffs, vs. MARRIOTT INTERNATIONAL, INC. ET AL., Defendants.	CIVIL NO. 14-00069 JMS-RLP ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' FIRST MOTION FOR LEAVE TO AMEND COMPLAINT AND ADD PARTIES

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' FIRST MOTION FOR LEAVE TO AMEND COMPLAINT AND ADD PARTIES

Before the Court is Plaintiffs' September 20, 2014 First Motion for Leave to Amend Complaint and Add Parties ("Motion") pursuant to Federal Rules of Civil Procedure 15(a)(2) and (20)(a)(2). ECF No. 19. The Motion seeks to amend Plaintiffs' February 7, 2014 Complaint ("Complaint") filed against Defendant Marriott International, Inc. ("Marriott"). Plaintiffs' proposed First Amended Complaint ("FAC") adds additional claims, and adds parties RP/LCPB Waikiki Hotel Owner, LLC ("RP/LCPB") and Kauai Coconut Beach Operator, LLC ("KCBO") to the Complaint. ECF. No. 19-1 at 2-3.

Marriott filed its Opposition on October 6, 2014. ECF No. 38. Plaintiffs filed their Reply on October 20, 2014. ECF No. 41. In addition, Plaintiffs and Marriott filed supplemental memorandums on October 31, 2014 and November 7, 2014, respectively. ECF Nos. 45 & 46.

The Court found this matter suitable for disposition without a hearing pursuant to Rule 7.2(d) of the Local Rules of Practice for the United States District Court for the District of Hawaii. After carefully considering the submissions of the parties and the relevant legal authority, and the record established in this action, the Court GRANTS IN PART AND DENIES IN PART Plaintiffs' Motion.

BACKGROUND

This action arises from Plaintiffs' Complaint against Marriott alleging copyright infringement and Digital Millennium Copyright Act ("DMCA") violations for the unauthorized use of a number of Plaintiffs' copyrighted photographs on the Courtyard by Marriott Waikiki's commercial website and Pinterest.com web page (collectively referred to as "sites"). ECF No. 1 at 3-4. Plaintiff Vincent Khoury Tylor ("Plaintiff Khoury") alleges that nine of his copyrighted photographs were used on the sites without consent. ECF No. 1 at 7. Plaintiff Vincent Scott Tylor ("Plaintiff Scott") alleges that two of his copyrighted photographs were used without consent. ECF No. 1 at 10. Plaintiff Khoury further alleges that Marriott violated the DMCA by intentionally removing or altering copyright management information from the photographs, or by distributing the photographs with knowledge that the copyright management information had been removed or altered. ECF No. 1 at 14.

Plaintiffs allege that after filing the Complaint, Plaintiffs discovered their copyrighted photographs on the Facebook.com web pages of the Courtyard Maui Kahului Airport ("CY Maui") and the Courtyard Kauai at Coconut Beach ("CY Kauai"), and on the Pinterest.com and Twitter web pages of the Waikoloa Beach Marriott Resort & Spa ("Waikoloa Resort"). ECF No. 19-2 at 18-23. Accordingly, Plaintiffs seek to amend their Complaint to add claims related to these hotels. In addition, Plaintiffs seek to add parties RP/LCPB, the owner of Courtyard by Marriott Waikiki Beach ("CY Waikiki"), and KCBO, the owner of CY Kauai. ECF No. 19-2 at 3.

Plaintiffs argue that RP/LCPB and KCBO are Marriott's franchisees; thus, Marriott, RP/LCPB, and KCBO (collectively "FAC defendants") are jointly, severally, or alternatively liable for the copyright infringement and DMCA claims asserted by Plaintiffs. ECF No. 19-1 at 3. Plaintiffs further contend that questions of substantive law and fact are common to all FAC defendants, and it would be a waste of judicial resources to bring additional claims or parties in separate suits. Id.

Marriott opposes Plaintiffs' Motion, arguing that joinder is not appropriate because the Plaintiffs fail to satisfy the requirements of Rule 20(a). ECF No. 38 at 9. Marriott contends that Plaintiffs' claims against each FAC defendant are distinct allegations concerning different acts by different people, related to different resort properties, entities, and websites, occurring at different times in varying degrees. Id. In addition, Marriott asserts that the proposed FAC will prejudice Marriott. Marriott argues that the practical impact of the proposed FAC will be that the comparatively lesser infringement claims, those involving only one or two images, will be held “hostage to the claims already on file,” and that unrelated franchisee hotel operators will be joined to defend against unrelated claims. ECF No. 38 at 11.

DISCUSSION

Rule 15(a)(2) permits a party to amend its pleading with opposing party’s written consent or the court’s leave. “The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Although leave to amend is within the discretion of the trial court, the court should be guided by the underlying purpose of Rule 15(a) which is to “facilitate decisions on the merits, rather than on technicalities or pleadings.” James v. Pliler, 269 F.3d 1124, 1126 (9th Cir. 2001).

A party asserting a claim may join, as independent or alternative claims, as many claims as it has against an opposing party. Fed. R. Civ. P. 18(a). “To name different defendants in the same lawsuit, however, a plaintiff must satisfy Rule 20, governing joinder of parties.” Weeks v. Espinda, No. CIV 10-00305 JMS/KSC, 2010 WL 2218631, at *3 (D. Haw. June 2, 2010). Rule 20(a)(2) allows joinder of defendants only if the following two requirements are met: (1) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (2) any question of law or fact common to all defendants will arise in the action. Fed. R. Civ. P. 20(a)(2)(A)-(B); Coughlin v. Rogers, 130 F.3d 1348, 1350 (9th Cir. 1997).

The Court finds that joinder of KCBO and the claims related to CY Kauai, CY Maui, and Waikoloa Resort are not appropriate in this case. However, the Court finds that joinder of the owner of CY Waikiki, RP/LCPB, is appropriate in this case given Plaintiffs' claims related to the alleged infringement of Plaintiffs' copyrights on CY Waikiki's sites.

A. Plaintiffs Fail to Satisfy Rule 20 to Add KCBO as a Defendant.

Plaintiffs seek to join the owner of CY Kauai, KCBO, and to add claims related to CY Kauai's Facebook.com web page. Plaintiffs fail to demonstrate that any right to relief is asserted against Marriott and KCBO jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences pursuant to Rule 20(a)(2)(A).

"The 'same transaction' requirement, refers to similarity in the factual background of a claim." Coughlin, 130 F.3d at 1350. General similarities are not enough to create a common transaction or occurrence. Id. In this case, the similarity among the claims against Marriott and KCBO is the alleged infringing of a number of Plaintiffs' copyrights. This commonality alone does meet the "same transaction, occurrence, or series of transactions or occurrences" requirement. In Coughlin, the plaintiffs sought to join other plaintiffs that had allegedly similarly suffered unreasonable delay in the adjudication of various applications and petitions to the Los Angeles Immigration and Naturalization Service. Coughlin, 130 F.3d at 1349. The Ninth Circuit concluded that plaintiffs failed to satisfy the "same transaction requirement," because each plaintiff had waited a different length of time, suffered a different duration of alleged delay, that the delay was disputed in some instances and varied from case to case, and there may have been numerous reasons for the alleged delay. Id. at 1350. The Ninth Circuit held that the existence of a common allegation of delay, in and of itself, did not suffice to create a common transaction or occurrence. Id. See Pac. Century Int'l Ltd. v. Does 1-101, No. C-11-02533-DMR, 2011 WL 2690142, at *4 (N.D. Cal. July 8, 2011) (rejecting joinder when the only commonality between the defendants were that each committed the same violations of the law in exactly the same way); Diabolic Video Prods., Inc. v. Does 1-2099, No. 10-CV-5865-PSG, 2011 WL 3100404, at *3 (N.D. Cal. May 31, 2011) (stating that the mere allegation that defendants have used the same peer-to-peer network to infringe a copyrighted work is insufficient to meet the standards for joinder set forth in Rule 20).

Here, Plaintiffs seek to add KCBO as a party simply because, similar to Marriott's alleged infringement of Plaintiffs' copyrights on CY Waikiki's sites, KCBO allegedly infringed Plaintiffs' copyrights on CY Kauai's Facebook.com web page. The claims related to these parties, however, involve different photographs and different Plaintiffs. Plaintiff Khoury alleged that nine of his photographs were used on CY Waikiki's Pinterest.com web page. Of the nine, only one of Plaintiff Khoury's photographs were used on CY Kauai's Facebook.com web page. The Complaint also alleged that two of Plaintiff Scott's photographs were used on CY Waikiki's Pinterest.com web page; none of Plaintiff Scott's photographs were used by CY Kauai. Accordingly, Marriott's alleged unlawful conduct is individual and separate from KCBO's alleged unlawful conduct. Plaintiffs fail to allege a plausible theory that Marriott and KCBO are jointly, severally, or liable in the alternative, for the alleged infringement of Plaintiffs' copyrights on CY Waikiki's sites and CY Kauai's Facebook.com web page. See Millennium TGA, Inc. v. Doe, No. 11-2258 SC, 2011 WL 1812786, at *3 (N.D. Cal. May 12, 2011) (concluding that the Doe defendants' individual and separate alleged reproductions of plaintiff's work, which occurred over the span of twenty days did not satisfy Rule 20(a)(2)).

Plaintiffs contend that Marriott's social media marketing campaign involves its franchisees and managed properties, demonstrating that each of the FAC defendants' use of Plaintiffs' copyrighted photographs are related. ECF No. 41 at 5. Plaintiffs assert that as the franchiser of the hotels managed and operated by the RP/LCPB and KCBO, Marriott had the right and ability to manage and control the appearance and functionality of its franchisees' commercial and social media web pages containing Plaintiffs' copyrighted photographs. ECF No. 41 at 10.

This argument provides a plausible theory for joining RP/LCPB with Marriott for the photographs on CY Waikiki's sites, but is insufficient to support joining KCBO as a party to those claims or joining RP/LCPB to a claim regarding CY Kauai. Accordingly, the Court finds that the claims against Marriott and KCBO are individual and separate allegations insufficient to meet the "same transaction, occurrence, or series of transactions or occurrences" requirement of Rule 20(2)(A).

Notably, Plaintiffs also fail to meet the requirement of Rule 20(a)(2)(B), which permits joinder only if "any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2)(B). Here, the questions of law and fact arising in the action against Marriott regarding the photographs on CY Waikiki's sites are not common to KCBO. The claims against KCBO are related to the photos on CY Kauai's

Facebook.com web page, while the claims against Marriott are based on theories of vicarious liability for infringing photographs discovered on its franchisee's commercial and social media sites. Accordingly, Plaintiffs fail to meet both requirements to join defendants to an action. The Court DENIES Plaintiffs' request to add KCBO as a party.

B. Joinder of RP/LCPB is Appropriate.

Plaintiffs provide sufficient reasoning for adding RP/LCPB as a party to its action against Marriott related to the photographs on CY Waikiki's sites. RP/LCPB is Marriott's franchisee and the owner of CY Waikiki. Plaintiffs' action against Marriott and RP/LCPB arises out of the same transaction, occurrence, or series of transactions or occurrences -- the alleged infringement of nine of Plaintiff Khoury's photographs and two of Plaintiff Scott's photographs on CY Waikiki's sites. The Court further finds that questions of law or fact common to both Marriott and RP/LCPB will arise in the action regarding the alleged unauthorized uses of Plaintiffs' photographs on CY Waikiki's sites. Accordingly, the Court finds that Plaintiffs' request to amend the Complaint to add RP/LCPB as a party meets the requirements of permissive joinder under Rule 20(a)(2) and GRANTS Plaintiffs' request to amend the Complaint to add RP/LCPB as a defendant. Plaintiffs shall file a First Amended Complaint adding RP/LCPB as a defendant no later than November 19, 2014.

C. Plaintiffs' Request to Add Claims Against Marriott is Denied.

Under Rule 18(a), governing joinder of claims, a plaintiff may bring multiple claims, related or not, in a lawsuit against a single defendant. Weeks, 2010 WL 2218631, at *3. Thus, multiple claims against a single party is permitted, but a claim against one defendant should not be joined with unrelated claims against the other defendant. Unrelated claims involving different defendants belong in different suits. Weeks, 2010 WL 2218631, at *3 (citing George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) ("[M]ultiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2.")). Plaintiffs' claims related to CY Kauai, CY Kahului, and Waikoloa Resort are not only unrelated claims, but raise different factual and legal issues, making resolution of this case less efficient if permitted to be added to the Complaint.

Plaintiffs seek to add claims regarding five of Plaintiff Khoury's photographs on CY Kauai's Facebook.com web page, one of Plaintiff Khoury's photographs on CY Kahului's Facebook.com web page, and two of Plaintiff Khoury's photographs on Waikoloa Resort's Pinterest.com web page. Out of all of these photographs, only one of these photographs, which was used on CY Kauai's Facebook.com page, were used on CY Waikiki's sites.

In addition, CY Kahului is managed by Marriott and its

Facebook page is maintained by the hotel's employees. ECF No. 41 at 8. Waikoloa Resort is managed by Marriott, but uses a third-party vendor to manage its social media web pages. CY Kauai is owned by KCBO. Accordingly, the claims related to CY Kahului, Waikoloa Resort, and CY Kauai present multiple claims against unrelated defendants raising different factual and legal issues than the claims against Marriott and RP/LCPB. This sort of morass involving multiple claims against multiple defendants raising a mishmash of legal theories confuses and complicates the issues for the parties rather than make the resolution of the case more efficient. See Weeks, 2010 WL 2218631, at *3 (stating that requiring pro se prisoners adhere to federal rules regarding joinder of parties and claims avoids confusion and prevents the sort of morass a multiple claim, multiple defendant suit produces). See also On The Cheap, LLC v. Does 1-5011, 280 F.R.D. 500, 503 (N.D. Cal. 2011) ("Since joinder is permissive in character, there is 'no requirement that the parties must be joined,' particularly where joinder would 'confuse and complicate the issues for all parties involved' rather than make the resolution of the case more efficient" (citing Wynn v. Nat'l Broad. Co., 234 F. Supp. 2d 1067, 1088 (C.D. Cal. 2002) ("Instead of making the resolution of this case more efficient, because of the multitude of isolated agreements and decision-makers and corporate families that Plaintiffs are alleging in this case, joinder would instead confuse and complicate the issues for all parties involved.”)).

Accordingly, the Court finds that permitting Plaintiffs to add claims related to CY Kauai, CY Kahului, and Waikoloa Resort is inefficient and not appropriate. The Court DENIES Plaintiffs’ request to add claims related to CY Kauai, CY Kahului, and Waikoloa Resort.

D. Addressing the Merits of Paragraph 55 Is Not Appropriate in this Motion.

Marriott argues that the amendments proposed in paragraph 55 of the proposed FAC is futile and should be rejected. ECF No. 38 at 12. As Plaintiffs point out, the allegations set forth in this paragraph of the proposed FAC are unchanged from the allegations in the original Complaint. See ECF No. 1 at 18, ¶ 35. Marriott denied these allegations in its Answer to the Complaint. See ECF No. 9 at 6. Accordingly, the Court finds that addressing the merits of this paragraph is not appropriate in this Motion.

CONCLUSION

In accordance with the foregoing, the Court GRANTS IN PART AND DENIES IN PART Plaintiffs’ Motion For Leave to Amend Complaint and Add Parties as follows:

1. The Court DENIES Plaintiffs’ request to amend their Complaint to add KCBO as a defendant.

2. The Court GRANTS Plaintiffs' request to amend the Complaint to add RP/LCPB as a defendant. Plaintiffs shall file a First Amended Complaint adding RP/LCPB as a defendant no later than November 19, 2014.

3. The Court DENIES Plaintiffs' request to add claims regarding CY Kauai, CY Kahului, and Waikoloa Resort.

4. The Court finds that addressing the merits of paragraph 55 in Plaintiffs' proposed FAC is not appropriate in this Motion.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, NOVEMBER 10, 2014.

Richard L. Puglisi
United States Magistrate Judge

TYLOR V. MARRIOTT INTERNATIONAL, INC., ET AL., CIVIL NO. 14-00069 JMS-RLP; ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT AND ADD PARTIES